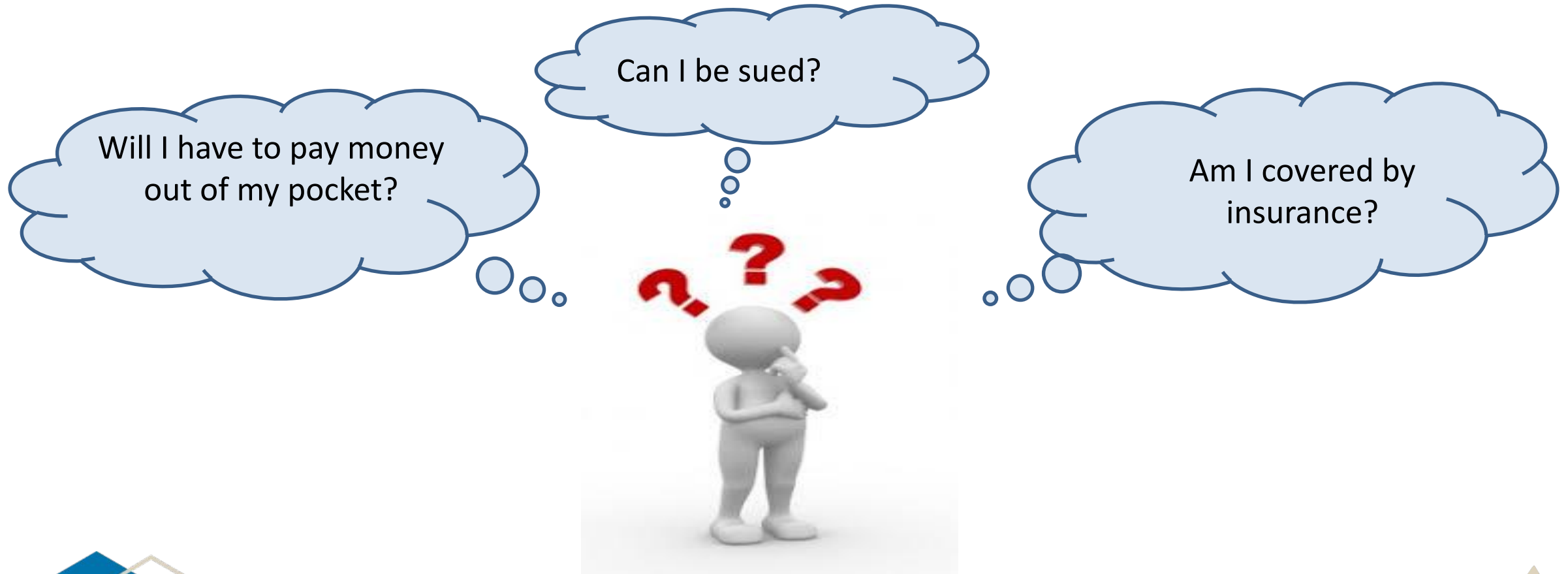


Desktop Workshop

Personal Liability While Driving a GOV

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What happens if you cause a vehicle accident while driving a GOV?



Ultimate Question of the Session

Are you personally liable if you are involved in a vehicle accident, while driving a Government Vehicle and are at fault?

- Includes all GOVs
 - GSA leased
 - Agency-owned
 - Tactical and non-tactical



Photo Courtesy of Joint Base Elmendorf Richardson Fire Department

Personal Liability Disclaimer

The information provided in this presentation DOES NOT constitute legal advice as any such advice would need to be based upon an analysis of law applied to specific facts by your agency.

For specific guidance contact your Agency Fleet Manager and/or your agency's General Counsel (Legal Office)

- Because each agency may handle liability differently

Why is this training important?

- Knowledge is power
 - The more you know/understand about the liability topic, you can better protect yourself and your agency
- Always on Offense
 - When you are on offense you are better prepared to meet the challenges of your everyday operations
 - You don't have to worry about being on defense

Roadmap

- Route 1
 - Your Responsibilities when using a GOV
 - Official Use/Misuse
 - Permissible/Impermissible Use
- Route 2
 - Scope of Employment
 - Liability Assigned
 - Federal Tort Claims Act
- Route 3
 - Privately Owned Vehicles on Government Business
 - Rental Cars – Liability/Official Business

What are my Responsibilities when I use a GOV?

- You must obey all motor vehicle traffic laws of the state and local jurisdiction except where the duties of your position require otherwise. (41 CFR 102-34.235)
- If you are fined for an offense you commit while performing your official duties, but was not required as part of your official duties, payment is your personal responsibility. (CFR 41 102-34-235)

What are my responsibilities when I use a GOV?

- If you receive a parking/moving violation while operating a GOV, you are responsible for paying the fine and will not be reimbursed (41 CFR 102-34.245)
 - Cannot use appropriated funds to pay the fines
 - Agency Driver is responsible



What are my Responsibilities when I use a GOV?

- You must pay parking fees and tolls while operating a motor vehicle owned or leased by the Government.
 - You can expect to be reimbursed for parking/toll fees while performing official duties (CFR 41 102-34.240)
- If you receive a Toll Violation Notice
 - Work with the respective State Toll Authority to pay the fee
 - In most cases appropriated funds can be used to pay tolls



Official Use

- Official use is using a Government motor vehicle to perform your agency's mission(s) as authorized by your agency. (41 CFR 102-34.200)
 - Agency Lead makes the decision
 - Incidental use must be authorized
 - What is incidental use?
- Incidental use is a taxable benefit reported to the IRS
 - <http://www.irs.gov/pub/irs-pdf/p5137.pdf> (Chapter 14 Page 54)

Official Use

- Agency Lead (cont.)
 - Approval authority to authorize non-Federal individuals to accompany you in a GOV
 - Family Members
 - Candidates (recruits) for Military
 - Contractors

Official Use

- What is OK for one agency may not be OK for another
 - GOV parked at a marijuana dispensary or a strip club
 - GOV parked at the local YMCA
 - GOV parked at the local Home Depot or Walmart

Official Use

- You may not use a GOV for transportation between your residence and place of employment UNLESS it is approved in writing by your agency head (41 CFR 102-34.205, 41 CFR 102-5) * Using Agency is responsible to maintain documentation
 - **CAN NOT BE DELEGATED** (41 CFR 102-5.40)
- Who is the Agency Head?
 - “The Highest Official of a Federal Agency”

Official Use

- Home to work authorizations **MUST** be renewed.
 - Renewal intervals vary based on the type of Home to Work authorized
 - Two (2) years for field work, updated as necessary
 - Fifteen (15) days for other circumstances
- Reference 41 CFR 102-5.60 ***HOW LONG ARE INITIAL DETERMINATIONS EFFECTIVE?***

Official Use/COVID 19

- If an emergency has occurred, may employees drive Government motor Vehicles home?
 - **ONLY** if the head of the agency has authorized home to work transportation for employees in an emergency
 - Must be in writing
 - Initial determination cannot be effective for more than 15 days.
- Determinations should be completed before an employee is provided home to work transportation
- Consult your agency fleet manager for agency specific guidance

Official Use

- Most recent change in 41 CFR 102-5.20: Home to Work
 - Rewritten to clarify employees using vehicles in conjunction with **Official Travel** from coverage by the regulation.
 - Not meant to give blanket authority to take a vehicle home prior to a TDY. Allows taking a GOV home if the use is more advantageous to the Government

Official Use

- Follow your agency's guidance on official travel.
 - Make sure you have written approval **BEFORE** you take the GOV home
- Approval should be on an **Official Travel Order**
 - DTS
 - CONCUR
 - E2
 - Agency-Specific System for Authorizing TDY Travel

Official Use

- Second change: §102-5.20 Home to Work
 - Updated to indicate employee use of vehicles between work and mass transit facilities is not covered by the regulation
- GOV use between work and mass transit facilities is now covered under 41 CFR 102-34-210
 - Head of Agency must make determination in writing valid for 1 year
 - No safe and reliable commercial or duplicative Federal mass transportation service that serves the same route
 - Transportation is made available, to other Federal employees
 - AFV's should be used to the maximum extent practicable

Permissible Use of GOV

- Making rounds of area worksites
- Attending official meetings
- Attending official training
- Going on official errands (e.g. post office, Court, car maintenance, car washes)
- TDY station to hotel



Permissible Use of GOV while on TDY

- Going to drug/grocery store, barber shop,
- Attend worship services and eating at restaurants
- Visiting a laundromat or dry cleaner
- Similar places necessary for the sustenance, comfort or health of employee
 - Hard to define
 - What about extended TDYs?
 - Will be agency specific



Examples of Impermissible use of GOV

- Going to a private social function
 - (birthday/retirement party, bar, strip club)
- Transporting people not authorized to be in the GOV
 - May not be covered under the Federal Tort Claims Act
- Doing personal errands
 - If you are in a leadership position, do not send your subordinates to do personal errands



Examples of Impermissible use of GOV

- Engaging in entertainment activities while on TDY (mall/movie)
- Attending local sporting events/attractions
- Picking up hitchhikers
 - What about cold weather states??
 - Recommend you have a policy on how to address emergency situations.



Examples of Impermissible use of GOV

- Carrying medicinal marijuana in a GOV for a patient
 - Currently any use of marijuana is not legal under Federal law (Controlled Substances Act (CSA) (21 U.S.C. § 811)
 - Even though legal in some states, it is still illegal according to the Federal Government
- Carrying a personally owned firearm in a GOV
 - Generally speaking, you cannot carry a privately owned firearm in a GOV unless you are performing a LE mission
 - Consult your agency Fleet Manager or General counsel for specific information/authorization

Penalty for misuse of a GOV

The statutory penalty for willful misuse is a **minimum** suspension of 30 days without pay. 41 CFR 102-34.225 (31 U.S.C. § 1349.)



“What if”

- But Devin you said, “You cannot use a GOV to engage in entertainment activities while on TDY (mall/movie)”
 - What if the restaurant is in the mall, can I eat there then go see a movie?
 - What if I park on the other side of the street, can I go to the mall to shop or watch a movie?
 - What if I drink alcohol during dinner, can I drive a GOV as long as my blood alcohol content is below the legal limit?



“What if”



- Perception is reality
 - You are a target for scrutiny when driving a GOV
 - People are looking for you to “do something wrong” and will report you
- DON'T EVER DRINK ALCOHOL AND DRIVE
- Be prepared to justify your actions
 - Don't risk it.

Permissible? Or Impermissible?

- Incident reported to “Howsmysdriving@gsa.gov”

To whom it may concern:

At approximately 0830 on 03AUG20 travelling on Hwy X towards XXXXX AFB I witnessed two GSA vehicles (Plates XXXXW and XXXXW) travelling at speeds in excess of 80 mph, tailgating in passing lane, passing on right, and consistently changing lanes without the use of a blinker to include close proximity lane changes.

This pattern of unsafe driving in a government vehicle was observed for the entire 25-30 min commute towards XXXXX AFB.



Permissible? Or Impermissible?



What happens when there is an Accident?

- An Investigation is started, information to find out:
 - Was the Government employee negligent?
 - Obey laws, speeding, under the influence of drugs/alcohol, texting, talking on cell phone
- Were they in their Scope of Employment?
 - What does “Scope of Employment” mean?

Scope of Employment

- Legal Term – activity authorized by a competent authority (supervisor, standard operating procedure, policy, orders) and was serving, at least in part, a government purpose
- Determined by state law where accident occurs
 - Critical Component
- Under circumstances where the US, if a private person, would be liable to the claimant under state law
 - i.e., would a civilian be liable if they were driving

Reference <https://fas.org/sqp/crs/misc/R45732.pdf> for more information

Scope of Employment Factors

- Time, place and occasion of accident
 - Normal business hours – What is normal?
- Act commonly done by such employee?
 - Do others in the office perform a similar function?
- The extent of departure from normal methods of performance?
- Act the employer could reasonably have anticipated?

Scope of Employment Factors

- Act motivated to serve employer or was it personal
 - Within general authority given by employer
 - In furtherance of employer's business
 - For accomplishment of objective which employed
- Justice Department makes final decision **

Out of Scope of Employment Examples

- Commuting to and from work (depending on state laws)
- Intoxicated or willful negligence – generally not in scope
- Using vehicle without permission
- Deviating from route – generally not in scope
- Accident occurred when NOT doing something to promote the mission of the agency – generally not in scope

Scope of Employment Case Study 1

Boscolo v. United States of America – March 2017



Scope of Employment Outcome

- Scope of Employment had to be proven
 - Burden was on the plaintiff
 - Could not provide substantive evidence the driver was within his scope of employment
- The Court found the U.S Marshall was acting outside the Scope of his Employment.
 - Dismissed the claims against the Defendant “United States of America” because the Marshall was acting outside his scope of employment
- He is liable for the accident and injury claims.

Scope of Employment/State Law

Singleton V Bruchfield Feb 25 2005



Liability

- What does the term Liability mean?
- How does it impact you if you are found at fault?
- Will you have to pay for the damage?



Liability Assigned

- If you were driving a GOV and faulted for causing an accident, injury and/or damage and were acting in your “Scope of Employment” you are covered under the Federal Tort Claims Act.
 - **This applies to third party claims only (i.e., the “other vehicle”)**
- If you were not acting in your scope of employment and caused an accident, injury or damage while using a GOV, you are personally liable
 - You will need a good lawyer

Federal Tort Claims Act

- Allows individuals to recover against the Federal Government for personal injury, wrongful death and property damage caused by negligence of a Federal employee acting within the scope of their employment
- Only type of relief allowed under FTCA (Federal Tort Claims Act) is money damages for a specified amount

Federal Tort Claims Act

- The Federal Employees Liability Reform and Tort Compensation Act of 1988 PL 100-694 amended the FTCA, it is the exclusive remedy for torts committed by federal employees within the scope of their employment.
- Generally speaking, you are protected from being personally sued by a third party as long as you are acting in your “Scope of Employment”

Federal Tort Claims Act

- Intentional Tort Exception
 - 28 USC provides that the FTCA does not apply to claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. However, the US may be held liable for any of the first six torts in the list if committed by an investigative or law enforcement officer of the United States Government.

Federal Tort Claims Act

- Basically Speaking, The FTCA is the Federal Government's Insurance Policy
 - Essentially, it (FTCA) substitutes the Federal Government for the individual as the defendant
 - Using/owning agency pays the third party claim if their driver is at fault and working in their Scope of Employment.

Claims Under the Federal Tort Claims Act

- If you are involved in a vehicle accident, are at fault and within your scope of employment
 - Work with your agency's Legal office
 - They are the POC agency for legal claims against the Government
 - i.e., the Air Force contact is the base's Judge Advocate General (JAG)

Liability Assigned

- What about contractors? (41 CFR 102-34.215)
 - How are they covered while driving a GSA GOV?
- Depends on how the contract is written:
 - Cost Reimbursable (leased directly from GSA) Must abide by FAR 51.2
 - Sole responsibility of Contracting Officer to ensure the requirements are met
 - FAR 51-202 requires contractors leasing directly from GSA to provide proof of vehicle liability insurance
 - Reference FAR 28.307-2 for liability insurance requirements

Liability Assigned

- Depends on how the contract is written: (continued)
 - Federal agency providing leased or owned vehicles to a contractor in performance of a contract:
 - That federal agency is responsibility to ensure contract clauses are in place to protect government's interests
 - Reference FAR 28.307-2 for information on liability insurance requirements
- Are government contractors allowed to ride in a GOV?

Federal Tort Claims Act

- Driving in Canada or Mexico?
 - Many foreign countries do not recognize the U.S. Government self-insurance
 - If your agency is not covered under a SOFA or other diplomatic treaty which specifically addresses liability issues.
 - GSA General Counsel's office determined that an agency **must** purchase additional liability insurance to operate vehicles in foreign countries

Federal Tort Claims Act

- Driving in Canada or Mexico? Continued
 - The Federal Torts Claims Act does not protect Federal employees outside the United States
 - Contact your agency's General Counsel office for assistance
 - If short duration trips, consider commercial rentals that are inclusive of insurance in foreign countries

Liability Assigned

- What about the damage to the Government Vehicle (GOV)?
 - Pretense
 - Government employee is at fault, there is damage to the GOV
 - FTCA protects them from 3rd party liability
- Can you (the driver) be held liable for the damage to the GOV?

Liability Assigned

- **YES**, the driver can be held liable for the damage to the GOV
 - FTCA covers 3rd Party Claims, it does not cover the damage to the agency owned/leased GOV
- Guidance based on Department of Justice ruling for EPA
 - “Memorandum of Opinion for the Acting General Counsel Environmental Protection Agency” May 28 2008

Liability Assigned

- Policy will vary by each agency
 - Typically a “Board of Survey” is convened to review the case
- It is an official investigation/vetting process
 - Will have to prove some type of negligence
- Investigation will decide if the at fault driver has to pay for damages to the GOV.
 - Examples are Army FLIPL, Air Force Report of Survey

Privately Owned Vehicles (POV) on Government Business

- In most cases use of personal vehicles for the benefit of the government is prohibited unless **Officially Authorized**.
- When authorized, employee is reimbursed on a mileage basis.
 - Cost of collision and liability insurance is a component of mileage reimbursement

Privately Owned Vehicles (POV) on Government Business

- If you are involved in an accident in your POV, were at fault and had proper authorization to use your POV for government business
 - You cannot be held liable for damage or injury to 3rd parties if acting within your Scope of Employment, you are covered under the Federal Tort Claims Act
 - This does not indemnify the employee from discipline or adverse action for negligence

Privately Owned Vehicles (POV) on Government Business

- Employee must seek reimbursement from their private insurance carrier for loss or damage to their Vehicle while under POV travel authorization
 - ****BEFORE** you use your POV for work related travel, contact your insurance carrier to see if and how you are covered.**

Privately Owned Vehicles (POV) on Government Business

- Employees may file a claim under the Military Personnel and Civilian Employees' Claims Act for the deductible amount of the employee's personal Insurance policy
 - Work with your agency's General Counsel to submit and process the claim.

Privately Owned Vehicles (POV) on Government Business

- The key to using a POV for official Government business is **“AUTHORIZED”**
 - An employee cannot arbitrarily use their vehicle (without proper authorization) to perform government business and expect to be covered

Rental Cars

- Generally drivers are covered under the FTCA
 - Scope of Employment, official use rules apply
- “Government Rate” rental costs provide a myriad of protections to the driver(s) - for more information visit <https://www.defensetravel.dod.mil/site/rentalCar.cfm>
 - Read Rental Agreement Number 4
- Encourage you to use the companies that offer the Government Rate

Rental Cars

- What about after hours or extended TDYs?
 - "A car rented by an employee while on official travel is not "owned or leased by the United States Government" for purposes of 31 U.S.C. § 1349. *Chufo v. Department of the Interior*, 45 F.3d 419 (Fed. Cir. 1995).

Rental Cars

- “When an employee is renting a car while on travel or temporary duty, there is nothing wrong with using the car for personal business.”
- “The impropriety enters the picture when the employee tries to charge the government for the personal portion of the use.”
 - GAO Redbook Appropriations Law Redbook, Volume III, pages 12-217 to 12-218

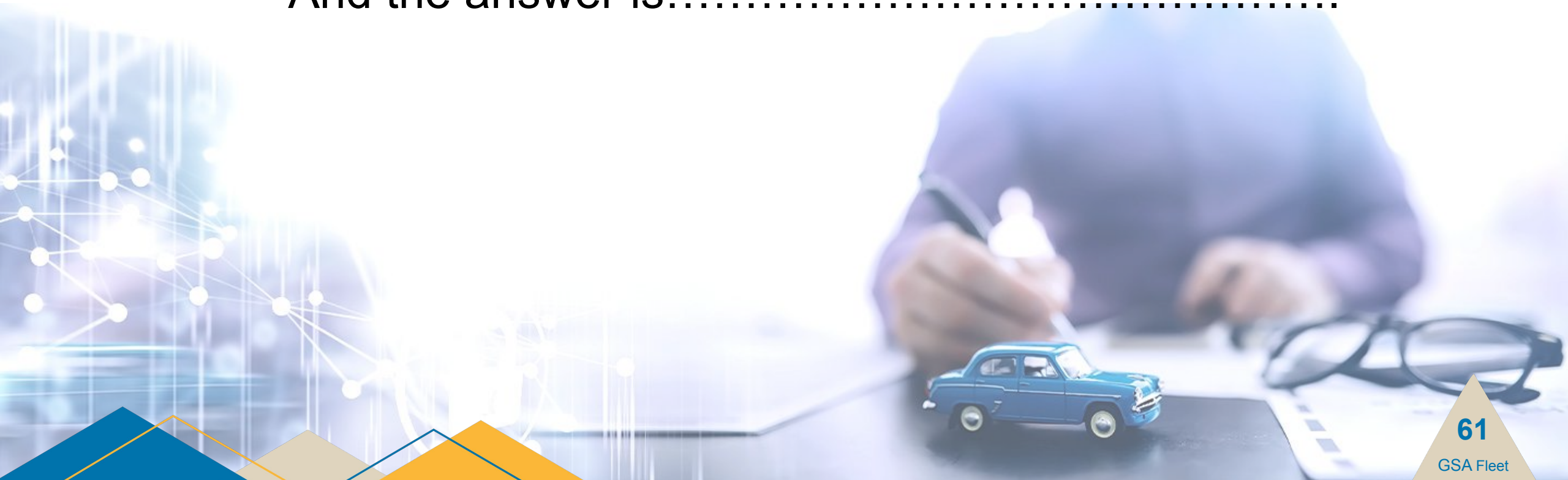
Rental Cars and Personal Insurance

- Recommend you contact your insurance carrier to see if they provide coverage for the “personal use”

Ultimate Question of the Session

Are you personally liable if you are involved in a vehicle accident, while driving a GOV and are at fault?

And the answer is.....



MOST DEFINITELY MAYBE!

- It depends on the mitigating circumstances, including but not limited to
 - Official Use
 - Scope of Employment
 - The state the accident was in
 - Fault
- Contact your Agency Fleet Manager or General Counsel for more information

Summary

- Your Responsibilities When Using a GOV
- Official Use/Misuse
- Permissible/Impermissible Use
- Scope of Employment
- Liability Assigned
- Federal Tort Claims Act
- Privately Owned Vehicles on Government Business
- Rental Cars
- We Answered the Liability Question.



Thank you for attending today's Desktop Workshop

For additional information on this topic contact:

Your FSR or Devin.beckes@gsa.gov

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- Register for future GSA Fleet Desktop Workshops - gsa.gov/gsa-fleet-training
- View pastDesktop Workshops at <http://bit.ly/DtWRecordings>

References

- 41 CFR 102-34 Motor Vehicle Management, Subpart D
- 41 CFR 102-34.225/31 U.S.C 1349 Adverse Personnel Actions
- Singleton v Burchfield Feb 25, 2005
- Boscolo v. United States of America – March 2017
- Air Force Instruction 24-301
- *Chufo v. Department of the Interior*, 45 F.3d 419 (Fed. Cir. 1995)

References

- Federal Tort Claims Act (FTCA)
- Federal Acquisition Regulation (FAR) 51.202
- GAO Redbook Appropriations Law Redbook, Volume III, pages 12-217 to 12-218
- Memorandum of Opinion for the Acting General Counsel Environmental Protection Agency” May 28 2008
- Controlled Substances Act (CSA) (21 U.S.C. § 811)
- 41 CFR 102-34.215
- 41 CFR 102-34.235

References

- Federal Acquisition Regulation 28.307-2
- 41 CFR 102-34-210
- The Federal Tort Claims Act,: A Legal Overview Nov 2019
<https://fas.org/sgp/crs/misc/R45732.pdf>



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